

ALLAHABAD HIGH COURT

City Board, Saharanpur

Vs.

Abdul Wahid

Criminal Ref. No. 177 of 1957, against decision of Addl. Dist. Magistrate, Saharanpur

(V.G. Oak and Bishambhar Dayal, JJ.)

14.05.1957. 22.01.1959

JUDGMENT

V.G. Oak, J.

1. This is a reference by the learned Additional District Magistrate of Saharanpur arising out of a prosecution under the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act) According to the prosecution. Abdul Wahid accused was suspected for selling adulterated milk. One Food Inspector purchased a seer of milk from the accused, and divided the milk into three phials. One phial was given to the accused, while another phial was sent to the Public Analyst to Government. The Public Analyst reported that the milk contained 13 per cent added water. The accused was prosecuted for having exposed adulterated milk for, sale. The licensed pleaded not guilty. He was, however, convicted by the learned City Magistrate, Saharanpur under Section 7 read with Section 16 of the Act. He was sentenced to a fine of Rs. 100/- or rigorous imprisonment for one month in default of fine.

2. The Municipal Board Saharanpur went up in revision. The revision application was taken up by the learned Additional District Magistrate of Saharanpur. He was of the view that, the sentence passed by the trial court upon the accused was not in accordance with law. The case was submitted to this Court for appropriate orders. This Court issued notices to parties on the question of enhancement of the sentence.

3. The Food Inspector appeared as a witness for the prosecution. He described how he took samples from the milk exposed by the accused for sale. The Public Analyst's report is on the record. The report shows that the milk was adulterated. Abdul Wahid's conviction under Section 7 read with Section 16 of the Act is proper.

4. The main question raised in this reference is the legality of the sentence. Section 16 of the Act

provides for penalties. The penalty provided for the first offence is imprisonment for a term which may extend to one year or fine or both. The penalty prescribed for a second offence is imprisonment for a term which may extend to two years and fine. The proviso to sub-clause (2) of clause (g) of Section 16(1) lays down that, in the absence of special and adequate reason to the contrary, the imprisonment shall not be less than one year and the fine shall not be less than two thousand rupees.

5. The trial Court mentioned in its judgment that the accused was previously convicted and sentenced to imprisonment for two months in a case of adulteration. The learned Additional District Magistrate therefore treated this case as one of a second offence. It will be seen that, Section 16 prescribed a minimum sentence for a second offence. The sentence actually passed in the present case is less than the minimum prescribed under Section 16 of the Act for a second offence. So, if it is a fact that this is a second offence committed by the accused under this Act the sentence passed by the trial Court would be illegal.

6. The learned counsel for Abdul Wahid maintained that the alleged previous conviction has not been proved.

7. The Food Inspector appeared before the Court as P.W. 1. In his examination-in-chief he stated that, the accused had been previously sentenced to imprisonment for two months for adulteration of milk. The witness was not cross-examined at all. It was therefore urged for the prosecution that, the statement of the Food Inspector on this point is sufficient for proving the previous conviction.

8. Section 511, Criminal Procedure Code describes how previous conviction may be proved. Section 511, Criminal Procedure Code states :

"In any inquiry, trial or other proceeding under this Code, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force - (a) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order, or, (b) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered; together with, in each of such cases evidence as to the identity of the accused person with the person so convicted or acquitted."

9. Two special modes for proving previous conviction have been laid down in Section 511, Criminal Procedure Code. It is obvious that, the prosecution did not prove the previous conviction in one of the two special modes laid down in Section 511, Criminal Procedure Code. Mr. Laxman Swarup appearing for the Municipal Board contended that, in addition to these

special modes, it is open to the prosecution to prove the previous conviction by any other mode provided by law. It was urged that one such method is by adducing oral evidence.

10. According to Section 91 of the Indian Evidence Act in all cases in which a matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of such matter except the document itself or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained. A judgment of conviction has to be in writing. This is therefore a matter required by law to be reduced to the form of a document. Such matter can be proved either from the document itself, or from secondary evidence when such secondary evidence is admissible. It has not been suggested that, the original judgment of previous conviction has been lost. So, oral evidence could not be led to prove the previous conviction.

11. The previous conviction could perhaps be proved from an admission of the accused. We find that no question about the alleged previous conviction was put to the accused in the present case. We thus find that the alleged previous conviction of Abdul Wahid accused has not been proved in the present case.

12. The expression 'second offence' used in Section 16 of the Act suggests that, the first offence must be an offence under this Act. The Food Inspector did not give details of the alleged previous conviction. He merely referred to a sentence of imprisonment for adulteration of milk. The Prevention of Food Adulteration Act, 1954 is a recent Act. The Food Inspector did not state that the previous conviction of the accused was under this very Act. For all these reasons, it is not possible to treat this case as one of a second offence. The case has to be disposed of on the footing that this is the first offence of the accused. No minimum punishment has been prescribed for the first offence under the Act. So the sentence of fine of Rs. 100/- cannot be said to be illegal. Nor is there any other good ground for enhancement of the sentence.

13. The reference is therefore rejected. The notice issued to the accused on the question of enhancement of sentence is hereby discharged.

Reference rejected.